

16. (Twice Amended) A protective undergarment, comprising:  
a first, outer layer of fluid-resistant material;  
a second layer of material having its peripheral edge attached to the first layer,  
[having] a shape conforming to that of the first layer and [having] a central opening;  
a third layer of material attached only at its outer edge by an elastic strip to the  
second layer and extending beneath the opening toward the first layer, the third layer  
being proportioned relative to the opening [such] so as to form a pocket, the entire  
periphery of which is beneath the second layer [that is] and larger than the opening.

#### REMARKS

The Abstract is objected to for purported "legal terminology." A new Abstract, conforming to the Examiner's preference, is attached herewith.

The drawings stand objected to as purportedly being replete with informalities. In response, the drawings are revised to address those concerns believed well founded. The description of Fig. 1 at page 3 is revised to describe the cutaway portion, for mutual consistency. The line from 10 is changed to be an arrow, and the line from 24 is now dashed to denote the underlying structure as depicted. A symbol for "gathers" is added at numeral 34.

Numeral 26 is said not to denote the fastener as described. However, the fastener generally comprises portions 26, 28 and 30, numeral 26 properly being designated as a "fastener." The Examiner's indulgence in this respect is solicited.

Underlining of the right-most numeral 22 is deleted. Underlining of numeral 50 in Figs. 1A and 1B is deleted, and an arrow in each figure added to designate the structure it denotes. Numeral 42 in Fig. 1 indeed denotes a corner assembling stitch line; numerals 42 are deleted from Figs. 1A and 1B, to avoid confusion.

In Figs. 5, 5A and 5B, the lead line from numeral 404 is made dashed. The Examiner questions lack of description of the structure 163A in Figs. 5 and 5B. No numeral 163A appears in those figures. Perhaps the Examiner meant to refer to numeral 163A in Fig. 6B. That element is a counterpart to 163, identified at the top of page 14.

It is presumed that the drawings are acceptable as presented. If not, a telephone call to the undersigned may help to resolve any outstanding issues.

The Examiner comments on use of trademark terms in the disclosure. All presentations of these terms are believed to be consistent with MPEP requirements.

The disclosure is objected to on the basis of several purported informalities. These informalities are addressed herein. The numeral 100 is deleted from Fig. 1. Symbolology depicting gathers is added in correspondence with numeral 34. The numeral 26 on page 7 of the disclosure is deleted. Deleted also is the numeral 42 from Fig. 1A. Page 6, line 8 of the amended paragraph is amended further to add a comma after "50." And a comma is deleted after "cloth." A summary section is added to the disclosure.

Claims 1-18 are objected to over numerous purported informalities. The claims are amended in various respects, with those informalities presumably aptly addressed.

Claims 1, 3, 4, 5, 6, 15 and 16 stand rejected as being anticipated by Pressley. Claims 6 and 16 are rejected as being unpatentable over Pressley in view of Ohara. Claims 1, 2, 9, 14, 17 and 18 are held anticipated by Brownlee; claim 10 is rejected as

being unpatentable over Brownlee in view of Ohara and Clyne. Claim 10 is rejected as anticipated by or obvious over Brownlee and claim 14 is rejected as being unpatentable over Brownlee in view of Alsop, Bernard and Brier. Claim 13 presumably is allowable over the prior art of record.

Claims 1 and 16 are rewritten to more clearly distinguish the subject matter of the current invention over the applied prior art of record.

Claim 1 is directed to the embodiments of Figs. 1-6, in which the intended protective undergarment comprises an outer layer of fluid-resistant material, and a conforming anchor layer. The outer and anchor layers comport with elements 12 and 16 in Fig. 1A. An inner layer of fluid-resistant material is attached, at all of its sides (at 17) to the anchor layer, the attached sides being displaced inward from corresponding sides of the anchor layer, and the inner layer extending outward from the anchor layer to form a pocket, as depicted. Neither Brownlee nor Pressley, references said by the Examiner to have anticipated a number of claims including claim 1, teaches such a structure. In Brownlee, a pocket 17 has its longitudinal ends connected to or under panels 22. All sides of that pocket are not displaced from corresponding sides of the underlayer and do not extend outward from that underlayer to form a pocket, as claimed. For example, Brownlee's pocket terminates at edge 24 or possibly stitching 77. In either case, there is no inner layer of fluid-resistant material attached at all of its sides to the anchor layer, the attached sides being displaced inward from corresponding sides of the anchor layer, and the inner layer extending outward from the anchor layer to form a pocket, as claimed. Similar commentary applies to Pressley, in which longitudinal ends of the pocket are not clearly defined, and surely not formed by fluid resistant materials with an inner layer of

fluid-resistant material attached, at all of its sides, to the anchor layer, the attached sides being displaced inward from corresponding sides of the anchor layer, and the inner layer extending outward from the anchor layer to form a pocket. Claim 1, as well as dependent claims 2-15, 17 and 18, is patentable thereover.

The secondary references of Alsop, Bernard, Ohara, Brier and Clyne do not help, as none is viably combinable with the primary references to achieve the structure claimed.

Claim 16 describes a "submerged pocket" structure, depicted in Figs. 7-9 by way of example. The claim requires an outer layer of fluid-resistant material and a conforming inner layer having a central opening. A third layer (forming the submerged pocket) is attached only at its outer edge by an elastic strip to the second layer and accordingly extends beneath the opening toward the first layer. The third layer is proportioned relative to the opening such that the entire periphery of the formed pocket, beneath the second layer, is larger than the opening. This curious structure can be seen at Fig. 7, and in cross-section in Fig. 7A, for example. What is described in claim 16 cannot viably be said either to be anticipated by Pressley or rendered obvious over Pressley in view of Ohara. First, claim 16, as amended, requires the entire periphery of the pocket beneath the second layer to be larger than the opening. This is not satisfied by Pressley in which only a part of the pocket is submerged. A combination of Pressley with Ohara is inappropriate for two reasons. First, Ohara describes a diaper that is not constructed, or intended to be reformulated, as an anchor layer and inner layer (pocket), as claimed. There is no motivation to create this arrangement, either in Pressley or Ohara, or in a proposed combination thereof. Second, it is not at all clear that such a combination even

is viable. Pressley and Ohara are structurally incompatible for making the combination proposed by the Examiner.

Claims 1 and 16 having been amended, and all other issues addressed, claims 1-18 are believed to be in condition for allowance. Favorable reconsideration is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT, WILL & EMERY



Stephen A. Becker  
Registration No. 26,527

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
(202) 756-8000 SAB:cms:vgp  
**Date: June 21, 2002**  
Facsimile: (202) 756-8087